IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 575 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI RAVJIBHAI PATEL

Versus

AMBALAL PRABHUDAS PATEL

Appearance:

1. Criminal Revision Application No. 575 of 2003

MR KB ANANDJIWALA for Petitioner.

MR JB PARDIWALA for Petitioner.

NANAVATI & NANAVATI for Respondent No. 1-2

MR KT DAVE, LD. APP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/07/2004

ORAL JUDGMENT

Heard learned counsel appearing for the parties.

The learned counsel appearing for the otherside Mr.Saurin Mehta submitted that the Revision Application should be

heard on merits and the same should be decided finally.

2. Rule. Mr. Sudhir Nanavati, learned counsel appearing for the respondent nos.1 and 2, waives formal service of Rule on behalf of the respondent nos.1 and 2. The formal service of Rule is also waived by Mr.K.T. Dave, ld. APP, on behalf of the respondent no.3-State. The matter is taken up for final hearing on consent of the learned counsel appearing for the parties.

3. The present Revision Application is preferred by the petitioner-orig. complainant under Section 397 r/w. Section 401 of the Criminal Procedure Code (hereinafter referred to as 'the Code'); and the petitioner has prayed that the record and proceedings of the Criminal Case No.684/1993 tried by learned Judicial Magistrate First Class, Anand, be called for and the order imposing sentence be altered by enhancing the sentence accorded to the respondent nos.1 and 2 (orig. accused nos.1 and 2). It is pleaded that in view of the nature of offence, the sentence imposed is grossly inadequate and such a lenient punishment may give a wrong message to the society.

4(i) To appreciate the grievance of the petitioner; especially the case of prosecution against the respondent nos.1 and 2, it is necessary to have a cursory look on the facts mentioned in the complaint. The petitioner is the General Manager of M/s. Gujarat Machinery Manufacturers Co. Ltd. and the said company is engaged in manufacturing Glass lined chemical process, pharmaceuticals, Corrosion resistance equipment reactor and industrial machinery, etc. and for that purpose, they are running a factory at Viddhal Udyognagar, Sojitra Road, Karamsad. The said company was having an agreement of technical knowhow since 1987 and on the date of complaint it was having a joint technical and financial collaboration with PFAUDLER Inc. of United States of America, engaged in manufacturing of corrosion resistance, glass lined equipment for chemical process industries. It is contended that the said process of manufacturing glass-frit for the purpose of glass lining equipment, article machinery, etc. is an exclusive patent of the said American Company, which had by way of technical collaboration permitted the petitioner's company (hereinafter referred to as 'the GMM') and the GMM was specially trained for manufacturing glass-frit as well as for process of glass lining equipment, machinery, etc.

4(ii) The accused no.1 being employee of the GMM was trained and given that 'knowledge' and the specialized

secret formula, the valuable property of the GMM, under a contract/agreement. The contract clearly shows the entrustment of intellectual property and knowledge with commercial value. This was a business secret, a valuable property.

4(iii) It is alleged that the respondent no.1, being an employee was entrusted with the valuable intellectual property belonging to GMM and he was supposed to use the said formula/knowledge for exclusive use of the GMM. It is mentioned in the complaint that under certain agreement of business secrecy the respondent no.1 had undertaken that in the event of his leaving, abandoning or resigning service of the GMM, he shall not directly or indirectly engage in or carry on of his own accord or in any capacity shall not divulge, alienate, transfer or permit said process or identical process of manufacturing glass-frit and also glass lining equipment, etc. The respondent no.1, being in the aforesaid matter, was entrusted with the property and dominion over the property, dishonestly misappropriated or converted to his own use the said property and/or has dishonestly disposed of the said property to the accused no.2 and the company Swiss Glass Equipment Ltd. in violation of direction of law as well as of the agreement of secrecy. The mode of such trust has been disregarded and disobeyed and thus expressly and impliedly the respondent no.1 has committed breach of trust and this situation has cropped up because of the collusion or conspiracy between the accused nos.1 and 2.

2(iv) The respondent no.1 herein resigned from service of the GMM somewhere in September, 1990 and the Police, during the course of investigation had seized certain documents from the residence of the said respondent. It is alleged by the complainant-GMM that the accused nos.1 and 2, by using formula/property belonging to the complainant's company have earned profit of more than Rs.5 crores approximately and this can be said to be a wrongful gain by the accused and a wrongful loss to the complainant-GMM. Ultimately, a complaint was filed for the offence punishable under Sections 405, 406 r/w. Sections 120(a) and 120(b), 109, 107 and 34 of the Indian Penal Code. After filing of the chargesheet and at the conclusion of the trial for the said complaint, the learned Magistrate held the accused guilty for the offence punishable under Section 406, 120 (b) and 34 of the Indian Penal Code and both have been directed to undergo punishment of three months simple imprisonment and to pay a fine of Rs.5,000/- by each of them. Though maximum amount of fine i.e. Rs.5,000/- has been imposed

by the learned Judicial Magistrate First Class, the period of substantive sentence imposed according to the petitioners is the most inadequate.

5. The learned counsel Mr.Anandjiwala appearing with Mr.J.M.Pardiwala for the petitioner, have taken me through the grounds mentioned in the memo of the Revision Application and the backbone of the arguments of Mr.Anandjiwala is that this Court while dealing with the Revision Application filed by the complainant can enhance the punishment and the Court of Sessions has no jurisdiction to enhance the punishment imposed by the trial Court. In support of his say, he has taken me through the relevant Sections 397, 401 and 386(3) of the Code and has taken me through same observations made by the Allahabad High Court in the case of Chandrapal v. State and ors., reported in 1979 Cr.L.J. 1437, wherein the Allahabad High Court has appreciated the ratio of the decision of this Court reported in 1977 Cr.L.J. 1666 (Equi :18 GLR 147). He has also taken me through relevant paragraph nos.6 and 7 of the of said decision reported in JT 1990 (2) SC 23 in the case of Govind Ramji Jadav. I have gone through the judgment but the ratio propounded by the cited decision is not found very relevant because the point before this Court requires to be appreciated from a different angle. It is nobody's case that the High Court can not enhance sentence while dealing with Revision Application and it can be enhanced while exercising appellate powers. The question posed before this Court is whether the Court of Sessions, if is moved and is requested to enhance the sentence imposed by the trial Court in exercise of powers vested with it under Section 397 r/w. Section 399 of the Code, can enhance the same or not; because the Revisional Court can exercise all the powers vested with the Appellate Court. I have also gone through the decision cited before me in the case of Rameshchandra Arora v. State, reported in 1960 SC 154 (Re: para:12). It is not necessary to reproduce the cited decision because the Court is convinced that the Revision Application preferred praying enhancement of punishment would be maintainable before the Court of Sessions having concurrent jurisdiction. Undisputedly, the Court of Sessions can exercise powers vested with it including powers of enhancement and, therefore, it would not be legally correct to say that only High Court can deal with such Revision Application, wherein enhancement of punishment is one of the prayers.

6. Mr. Sudhir Nanavati, learned senior counsel, has rightly relied on the ratio of the decision of this Court, in the case of Prabhudas Chhaganlal and anr. v.

Babubhai Virabhai Miseria and anr., reported in 18 GLR 147 (supra), because the very question was posed before the Division Bench. Of course, the Division Bench has also dealt with some other points but it has been analyzed by this Court in detail with reference to relevant Sections mentioned in the decision. The Allahabad High Court, of course, has opined that the Court of Sessions does not possess power to enhance the sentence while dealing with Revision Application and the same can be exercised by the High Court. But in the decision in the case of Prabhudas Chhaganlal (supra) of this Court has binding effect and it would be beneficial to quote relevant paragraph no.17, wherein this Court has recorded its conclusion saying :

> "Our conclusion, therefore, is that a Sessions Judge can entertain an application in revision against sentence and enhance the sentence in revision in certain cases. It is clear that by making of this provision, the cases of enhancement of sentence at the instance of private party which would have normally gone to the High Court in respect of sentences passed by the Magistrates subordinate to the Sessions Court, would now go to the Sessions Court; and thereby the object of relieving congestion of the work in High Court in part will be achieved to some extent. We must, however, make it clear that interference in revision with an order of sentence or order of acquittal is subject to the limited considerations laid down by the Supreme Court; and the power cannot be exercised as if the Sessions Judge is hearing an appeal. Thus, in respect of enhancement of sentence in revision, the enhancement can be made only if the Court is satisfied that the sentence imposed by the trial Court is unduly lenient, or that in passing the order of sentence, the trial Court has manifestly failed to consider the relevant facts. (Vide Alamgir v. State of Bihar, A.I.R. 1959 Supreme Court, 436). Similarly, in Ram Narain v. State of U.P. A.I.R. 1971, Supreme Court page 757, it was laid down that sentence can be enhanced if it was "so manifestly inadequate as to have resulted in failure of justice."

7. This cited decision has a binding force to this Court. In the ratio of Allahabad High Court has only persuasive value. Mr.Anandjiwala has neither pressed for

detailed reasons nor insisted for any further discussion in light of some of the decisions cited by him and/or by Mr. Nanavati, learned senior counsel. It is, therefore, not necessary to enter into further detailed discussion.

8. The Court is aware that the jurisdiction of the Court dealing with the Revision Application preferred under the Code is limited, so when a Court is dealing with Revision Application, the jurisdiction is to be exercised in light of the settled legal proposition. There are 'n' number of decisions, so obviously when the Court is called upon to exercise revisional jurisdiction, the same is required to be exercised in accordance with law; especially in light of the observations made by the Apex Court in the case of Chinnaswamy v. State of Andra Pradesh, reported in AIR 1962 SC 1788 and in the case of Kishan Swaroop v. Government of NCT of Delhi, reported in AIR 1998 SC 990, because the present case has been tried as a case instituted on a police report.

9. Undisputedly, the convict respondents-accused persons have preferred appeal against the judgment and order of conviction and sentence before the Court of Sessions. The insistence of Mr.Anandjiwala before this Court is that the appeal preferred by the convict accused persons should be brought before this Court and the present Revision Application as well as the appeal against the conviction should be heard simultaneously by this Court but that probably may deprive the respondents-accused persons one more chance to prefer Revision Application, if their conviction remains confirmed. It is true that both these proceedings require to be heard together and simultaneously by the same Court and thus, if this procedure is adopted, the interest of justice can be protected.

10. So in view of the above decision in the case of Prabhudas Chhaganlal and anr. (supra) and the observations made therein, the Registry of this Court is directed to send the Revisional proceedings before the Court of Sessions with a direction that the present Revision Application preferred by the original complainant be heard and decided with the Criminal Appeal No.63/2003 filed by the respondent nos.1 and 2 (orig.accused nos.1 and 2) before the Sessions Court. I am told by Mr.Nanavati that the learned Sessions Judge, Kheda (Nadiad) has admitted the appeal vide order dated 26th September, 2003 and the respondent nos.1 and 2 have been enlarged on bail on the day of admission of the appeal. So now the learned Sessions Judge shall hear and decide the appeal as well as the present Revision

Application as the Revision Application preferred by the orig.complainant praying for enhancement of the sentence imposed by the trial Court. The Revision Application be heard without being influenced by the observations made by this Court on its own merits. While dealing with the Revision Application the point of maintainability also should be decided, if raised.

In view of the observations made hereinabove, this Revision Application is disposed of and Rule is discharged accordingly.

(C.K. Buch, J)

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